

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3048 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE N.G.NANDI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

PHARMALAB ENGINEERING INDIA LTD

Versus

UNION OF INDIA

Appearance:

MR PARESH M DAVE for Petitioners
MR MUKESH R SHAH for Respondents

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE N.G.NANDI

Date of decision: 11/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

Hseard learned Counsel.

Rule. Mr.Mukesh Shah waives service of Rule on behalf of the respondents.

Against the order dated 29th Jan.1998 passed by the Commissioner of Central Excise, Division-II, Ahmedabad, the petitioner Company preferred an appeal along with stay application before the Commissioner (Appeals), Central Excise and Customs, Ahmedabad. In this appeal, the Commissioner (Appeals), passed a stay order No.618 of 1998 on 21st Dec.1998 directing the appellants to deposit Rs.52,000/- as pre-deposit under Sec.35F of the Central Excise Act, 1944 by 7th Jan.1999 and furnish the proof of deposit by 14th Jan.1999. It was further ordered that subject to deposit of this amount, the balance amount of duty confirmed/penalty imposed shall be waived till final disposal of the appeal and if the appellants fail to comply with these directions, their main petition shall be liable to be dismissed for non-compliance of Sec.35F. An order dated 20th March 2001 has now been passed by the Commissioner (Appeals) dismissing the appeal because of the appellants' failure to deposit the amount as per the stay order read with the non-compliance of the provisions of Sec.35F of the Central Excise Act, 1944.

The stay order dated 21st Dec.1998 as well as the final order dismissing the appeal on 20th March 2001 have been made the subject matter of challenge in the present petition. Learned Counsel for the petitioners has invited the attention of this Court to the copies of the orders passed by this Court in certain Special Civil Applications wherein exactly identical stay orders had been passed and the same were set aside by the Court. The copies of such orders passed by the Division Bench have been annexed with the petition at Annexure.C collectively. Such orders have been passed by the Division Bench in different group of Special Civil Applications on 18th Jan.1999, 5th April 1999, and 18th Nov.1999. The said order dated 21st Dec.1998 made in the present petition is identical to the orders which were the subject matter of challenge in the above referred groups of Special Civil Applications which were decided on 18th Jan.1999, 5th April 1999, and 18th Nov.1999 and this factual position is not in dispute between the parties. The said order at Annexure.B dated 21st Dec.1998 therefore deserves to be quashed and set aside for the same reasons that it is not a speaking order and the same order is passed in stereo-type manner by filling

in the blanks which shows the lack of application of mind to the facts of each case. Accordingly the impugned stay order dated 21st Dec.1998 is hereby quashed and set aside.

Whereas in the present case, the appeal which had been preferred by the petitioners before the Commissioner (Appeals) was dismissed by the impugned order dated 20th March 2001 on the ground that the terms of the stay order had not been complied with and the amount as directed under the stay order had not been deposited and whereas the stay order itself has not been found to be legal and the same has been quashed and set aside, the order dismissing the appeal as a consequence of non-compliance of the stay order cannot be sustained and the same is also quashed and set aside. In the result, the matter is remanded back to the Commissioner (Appeals), Central Excise and Customs, Ahmedabad for reconsideration afresh with regard to the stay as well as appeal in accordance with law. The Commissioner (Appeals) shall decide the stay matter afresh within a period of two months from the day of the receipt of the certified copy of this order in accordance with law by passing a reasoned order after due application of mind to the facts of the present case and shall also decide the main appeal thereafter as expeditiously as possible. This Special Civil Application is hereby disposed of and the Rule is decided accordingly.

11th July 2001 (M.R. Calla, J.)

(N.G. Nandi, J.)

Sreeram.